

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 3:08cv709

JEAN CUNNINGHAM, *et al.*,

Defendants.

JOINT STATEMENT OF THE PARTIES

The Plaintiff-Intervenor, United States of America, and the Defendants, Jean Cunningham, Nancy Rodrigues, and Harold Pyon, being the members of the Virginia State Board of Elections, sued in their official capacity, the Virginia State Board of Elections, and the Commonwealth of Virginia, submit this as their Joint Statement, in response to the Court's October 15, 2009 Final Order.

The following are the parties' agreed-upon procedures for counting the ballots in question:

1. The Virginia State Board of Elections has directed electoral boards to count all timely-requested, late-mailed UOCAVA absentee ballots that are otherwise valid under Virginia law and received within 30 days after the November 4, 2008 General Election.
2. General registrar shall notify Clerks of Court (who have custody of the ballots) of the need to access election materials and of the upcoming meeting of electoral board. General registrar shall request room at Clerk's office for purpose of public meeting.
3. General registrar shall notify political parties of counting absentee ballots and electoral board meeting.
4. General registrar shall submit "Request to Inspect Sealed Election Materials: SBE-659" to Secretary of the State Board requesting access to election materials at Clerk's office.

5. State Board returns signed “Request to Inspect Sealed Election Materials: SBE-659” to General registrars.

6. Electoral board shall summons majority of officers of election who served in Central Absentee Precinct on 11/4/2008 to general registrar’s office.

6.1. If any of the officers of election are unable to attend, the electoral board shall note who was not able to attend and the reason why.

7. A majority of officers shall meet in general registrars’ office to acquire second copy of the November 4, 2008 Statement of Results and “Request to Inspect Sealed Election Materials: SBE-659.” After acquiring documents, officers proceed to the Circuit Court.

8. Officers of election open the absentee ballots in question and count those absentee ballots that are valid under this Court’s October 15, 2009 Final Order.

8.1. Officers of election complete two copies of the Statement of Results (SOR).

The SOR shall indicate the vote totals certified in 2008, the ballots counted as a result of this Court’s October 15, 2009 Final Order, and the total.

8.2. Officers shall place counted absentee ballots in Envelope 3 and reseal.

8.3. Officers shall place rejected absentee ballots in Envelope 5 and reseal.

8.4. Officers shall place one copy of 2008 SOR and 2009 revised SOR in appropriate envelopes.

8.5. Officers shall return to General Registrar’s office one copy of 2008 SOR and 2009 revised SOR.

9. Electoral boards in each of the jurisdictions shall convene a public meeting for the purpose of certifying the election.

9.1. General registrar shall bring their copies of the 2008 SOR and 2009 revised SOR.

10. Electoral board shall amend abstract of votes and forward it to State Board.

11. Electoral board shall then certify the local elections with new results.

12. General registrar updates VERIS to:

12.1. Reflect that voter's absentee ballot was/was not counted, and apply voter credit as appropriate.

12.2. Update voter turnout.

12.3. Update election results and include reason why results were changed.

Reason shall be: "*Per United States v. Cunningham.*"

13. State Board staff shall prepare certified abstracts and amended canvass book pages for the offices of President and Vice President, United States Senate and affected United States House of Representatives Districts.

14. State Board shall meet and certify the election.

14.1. State Board staff shall bring certified abstracts and amended canvass book pages for the offices of President and Vice President, United States Senate and affected United States House of Representatives Districts.

14.2. State Board shall examine the certified abstracts and make statements of the whole number of votes given at the November 4, 2008 General Election for President and Vice President, United States Senate and affected United States House of Representatives Districts.

14.3. State Board shall endorse and subscribe on such statements a certificate of their determination by signing the amended canvass book pages.

15. State Board shall issue updated certificates of election.

Respectfully submitted,

JEAN CUNNINGHAM, *et al.*

By /s/
Counsel

Robert A. Dybing, VSB No. 32712
John A. Gibney, Jr., VSB No. 15754
ThompsonMcMullan, P.C.
100 Shockoe Slip, Third Floor
Richmond, Virginia 23219
Telephone: (804) 649-7545
Fax: (804) 780-1813
Email: rdybing@t-mlaw.com

Counsel for Jean Cunningham, Nancy Rodrigues, and Harold Pyon, being the members of the Virginia State Board of Elections sued in their official capacity; Virginia State Board of Elections; and the Commonwealth of Virginia, Defendants

Agreed to:

THOMAS E. PEREZ
ASSISTANT ATTORNEY GENERAL

NEIL H. MACBRIDE
UNITED STATES ATTORNEY

/s/
Robin E. Perrin
Virginia State Bar No. 65825
Assistant United States Attorney
United States Attorney's Office
600 East Main Street, Suite 1800
Richmond, Virginia 23219
Telephone: (804) 819-5400
Facsimile: (804) 819-7417
Email: Robin.Perrin2@usdoj.gov

CHRISTOPHER COATES
REBECCA J. WERTZ
RICHARD DELLHEIM (admitted *pro hac vice*)
LEMA BASHIR
United States Department of Justice
Civil Rights Division, Voting Section
950 Pennsylvania Ave., NW
Room NWB-7254
Washington, D.C. 20530
Phone: (202) 305-1291
Fax: (202) 307-3961
christopher.coates@usdoj.gov
rebecca.j.wertz@usdoj.gov
richard.dellheim@usdoj.gov
lema.bashir@usdoj.gov

CERTIFICATE OF SERVICE

I certify that on November 4, 2009, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to:

Christopher Coates, Chief
Rebecca J . Wertz, Deputy Chief
Richard Dellheim
Lema Bashir
Trial Attorneys
United States Department of Justice
Civil Rights Division, Voting Section
950 Pennsylvania Avenue NW
Room NWB-7254
Washington, D.C. 20530
Counsel for Intervenor United States of America

By: /s/
Robert A. Dybing, VSB No. 32712
John A. Gibney, Jr., VSB No. 15754
Counsel for Defendants
ThompsonMcMullan, P.C.
100 Shockoe Slip, Third Floor
Richmond, Virginia 23219
(804)649-7545
Fax: (804)780-1813
rdybing@t-mlaw.com
jgibney@t-mlaw.com